

California Department of Fair Employment & Housing Fact Sheet

General Information about the California Family Rights Act

California Government Code sections 12945.1 and 12945.2 of the *Fair Employment and Housing Act (FEHA)* contain provisions relating to family care and medical leave entitlement. The Fair Employment and Housing Commission's (FEHC) interpretation of these provisions is contained in Section 7297.0 of the California Code of Regulations.

In addition to the family care and medical leave requirements of the FEHA, employers of five or more persons have additional obligations pertaining to pregnancy disability leave.

The federal Family and Medical Leave Act (FMLA) also ensures family care or medical care leave entitlement (29 USC sections 2601 et seq. Implementing regulations are contained in 29 CFR Part 825). The FMLA is enforced by the Wage and Hour Division of the U.S. Department of Labor. The CFRA and pregnancy disability leave provisions of state law are enforced by the Department of Fair Employment and Housing (DFEH). Where differences between federal and state law exist, employers should comply with those provisions that are most beneficial to the employee.

This fact sheet addresses the most frequently asked questions regarding family care or medical leave entitlement.

ELIGIBILITY REQUIREMENTS

For what reasons may an employee take a CFRA leave?

An employee may take an unpaid leave for the birth of a child for purposes of bonding, for placement of a child in the employee's family for adoption or foster care, for the serious health condition of the employee's child, parent or spouse, and for the employee's own serious health condition.

What is a serious health condition?

Serious health condition means illness, injury (including on-the-job-injuries), impairment, or physical or mental condition of the employee or a child, parent or spouse of the employee that involves either (1) inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential care facility or (2) continuing treatment or supervision by a health-care provider.

May an employer require a written medical certification of the serious health condition of the employee, employee's child, parent or spouse before granting the leave?

Yes. The employer may require written communication from the health-care provider of the child, parent, spouse, or employee with a serious health condition. Certification is sufficient if it includes (1) the date on which the serious health condition commenced, (2) the probable duration of the condition, (3) an estimate of the amount of time the employee needs to care for the sick family member, (4) a statement that the serious health condition warrants participation of a family member to provide care during the period of treatment or medical supervision, or (5) a statement that the employee, due to the serious health condition, is unable to perform one or more of the essential functions of his or her job.

May an employee take a CFRA leave due to a disability related to her pregnancy, childbirth, or related medical condition?

No. An employee has no right to a CFRA leave for a disability related to pregnancy, childbirth, or related medical condition. Separate leave entitlement is provided by the FEHA's pregnancy leave provisions covered in Government Code section 12945.2(b)(2). Under the FMLA, however, a pregnancy disability qualifies as a serious health condition and runs concurrently with California pregnancy disability leave.

What employers are covered under the CFRA?

Employers subject to the CFRA are those who do business in California and employ 50 or more part-time or full-time employees in any state. Covered employers include non-profit, religious organizations, the State of California, including any political and civil subdivision of the state and cities, regardless of the number of employees.

What requirements must an employee satisfy to be eligible to take a CFRA leave?

To be eligible for a CFRA leave, an employee must be either a full-time or part-time employee working in California, have more than 12 months (52 weeks) of service with the employer, have worked at least 1,250 hours in the 12-month period before the date the leave begins, and work at a location in which the employer has at least 50 employees within 75 miles of the employee's work-site.

LEAVE REQUIREMENTS

What is the maximum CFRA leave entitlement?

Leave may total up to 12 workweeks in a 12-month period. It does not need to be taken in one continuous period of time.

How is the 12-month period calculated?

An employer may choose how to compute the 12-month period in which the 12 work weeks of leave entitlement occurs using any of the four calculation methods allowed under the federal

FMLA regulations listed below. An employer must, however, apply the chosen method consistently and uniformly to all employees.

These methods are:

1. The calendar year;
2. Any fixed "leave year" of 12 months, such as a fiscal year or a year starting on an employee's anniversary date;
3. The 12-month period measured from the date an employee's first FMLA/CFRA leave begins; or
4. A rolling 12-month period measured backward from the date an employee uses any leave.

To how much leave are the CFRA-eligible employees entitled? What if employees work more or less than five days per week or work alternative work schedules?

The leave entitlement is 12 work weeks or 60 work days for full-time employees working a five-day, eight-hours-a-day work week during a 12-month period. For eligible employees who work more or less than five days a week or who work on alternative work schedules, the number of working days that constitute 12 work weeks is calculated on a pro rata or proportional basis.

May the CFRA leave be added onto other forms of leave?

Yes. At the end of an employee's period(s) of pregnancy disability leave, a CFRA-eligible employee may request a CFRA leave of up to 12 work weeks for reason of the birth of her child, if the child has been born by this date. There is no requirement that either the employee or child have a serious health condition. Nor is there a requirement that the employee no longer be disabled by her pregnancy, childbirth, or related medical condition before taking a CFRA leave for reason of the birth of her child.

Is there a minimum duration for a CFRA leave taken for the birth, adoption, or foster-care placement of a child?

Yes. The basic minimum duration of a CFRA leave is two weeks when the leave is taken for the birth, adoption, or foster-care placement of a child. However, an employer shall grant a request for CFRA leave of less than two-week duration on any two occasions. In addition, leave taken for the birth, adoption, or foster-care placement of a child must be completed within one year of the qualifying event.

Is there a minimum duration for a CFRA leave taken for the serious health condition of a parent, child, or spouse or for the serious health condition of the employee?

No. Where CFRA leave is taken for the serious health condition of a parent, child, or spouse or for the serious health condition of the employee, leave may be taken intermittently or on a reduced work schedule when medically necessary, as determined by the health care provider of the person with the serious health condition. However, an employer may limit leave increments to the shortest period of time the employer's payroll system uses to account for absences.

Are there any limitations to the CFRA leave entitlement?

Yes. If both parents are eligible for the CFRA leave but are employed by the same employer, that employer may limit leave for the birth, adoption, or foster-care placement of their child to 12 work weeks in a 12-month period between the two parents. No other limitations restrict these parents from taking a CFRA leave for other qualifying reasons.

BENEFITS

Must an employer pay employees during their CFRA leaves?

No. An employer is not required to pay an employee during a CFRA leave, except when an eligible employee elects or the employer requires the employee to use any accrued vacation time or other accumulated paid leave other than accrued sick leave. However, if the CFRA leave is for the employee's own serious health condition, the employee may elect or the employer may require the employee to use any accrued vacation time or other accumulated paid leave, including any accrued sick leave. Additionally, accrued sick leave may be used for a CFRA leave granted for any other reason if mutually agreed to by the employer and employee.

Must an employer continue health care coverage for employees during their CFRA leave?

Yes. If the employer provides health benefits under any group health plan, the employer has an obligation to continue providing such benefits during an employee's CFRA leave, a FMLA leave, or both. This obligation commences on the date leave first begins under the FMLA (i.e. for pregnancy disability leave) or under the FMLA/CFRA (i.e. for all other family care or medical leaves). The obligation continues for the duration of the leave(s), up to a maximum of 12 workweeks in a 12-month period.

Must an employer continue other benefits during an employee's CFRA leave?

Yes. During the period of a CFRA leave, the employee is entitled to accrual of seniority and to participate in employee benefit plans, including life, short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions as would apply to any other leave granted by the employer for any reason other than a CFRA leave.

REINSTATEMENT

Must an employer reinstate the employee at the end of his or her CFRA leave?

Yes. Upon granting an employee a CFRA leave, the employer shall guarantee reinstatement to the same or comparable position and shall provide the guarantee in writing upon the request of the employee. Employment in a comparable position means employment in a position that is virtually identical to the employee's original position in terms of pay, benefits, and working

conditions, including privileges, prerequisites, and status. It must involve the same or substantially similar duties and responsibilities, skill, effort, and authority, must be performed at the same or geographically proximate work site, and ordinarily means the same shift or same or equivalent work schedule.

Are there any reasons an employer could deny reinstatement to an employee out on a CFRA leave?

Yes. An employer may deny reinstatement to an employee if his or her position ceased to exist, such as in a lay-off. An employer may also deny reinstatement if the employee taking the leave is a key employee (salaried and among the highest-paid 10 percent), and the denial of reinstatement is necessary to prevent substantial and grievous economic injury to the operations of the employer. However, the employer must notify the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary, as well as give the employee a reasonable opportunity to return to work.

NOTIFICATION

Must an employee give advance notice if he or she wants to take a CFRA leave?

Yes. An employee or employee's spokesperson shall provide at least verbal notice sufficient to make the employer aware the employee needs a CFRA-qualifying leave, state the reason for the leave, and the anticipated timing and duration of the leave. An employer may require 30 days advance notice before a CFRA leave is to begin if the need for the leave is foreseeable. If 30 days is not practicable (i.e. lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency), notice must be given as soon as practicable. Under all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as CFRA or FMLA. In addition, the employer shall respond to a leave request as soon as possible but within ten calendar days after receiving the request.

Must an employer inform employee of notice requirements?

Yes. An employer shall provide notice to his or her employees of the right to request a CFRA leave and shall post the notice in a conspicuous place or places where employees tend to congregate. If the employer publishes a handbook describing other kinds of personal or disability leaves available to its employees, the employer shall include a description of a CFRA leave in its next edition. The employer may include both pregnancy disability leave and the CFRA leave requirements in a single notice.

For more information, contact the Department toll free at: (800) 884-1684

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